Supreme Court, U.S.
FILED
MAR 11 2013
OFFICE OF THE CLERK

No. 220141, Original

RECORD
AND
BRIEFS

In The
Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and
STATE OF COLORADO,

Defendants.

On Motion For Leave
To File Bill Of Complaint

COLORADO'S BRIEF IN OPPOSITION TO THE MOTION FOR LEAVE TO FILE COMPLAINT

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COMES NOW the State of Colorado by and through counsel and pursuant to Supreme Court Rule 17.5 and submits this [Brief in Opposition to the Motion for Leave to File Complaint] ("Motion") submitted by the State of Texas in this matter, No. 22O141, Original.

STATEMENT OF POSITION

The State of Colorado has been in compliance with its obligations under the Río Grande Compact for over forty years, and the State of Texas named the State of Colorado as a party to this action only because it is a signatory to the Río Grande Compact. Complaint, *Texas v. New Mexico and Colorado*, No. 22O141, Original (January 2013) at 3. Texas has not made any claim against Colorado for violation of the Río Grande Compact in its proposed complaint.

The State of Colorado does not take a position or respond to Texas' specific allegations. However, Colorado cannot determine whether and to what extent Texas' Brief in Support of Motion for Leave to File Complaint ("Brief") and Complaint raise an actual compact controversy for this Court to consider. It is Colorado's position that states should avoid litigation of compact issues whenever possible. Moreover, an original action in this Court that invokes the Río Grande Compact may indirectly impact Colorado interests. Accordingly, unless and until the state can better understand the particular compact matters at

issue, Colorado cannot support granting Texas' Motion.

ARGUMENT

Texas asks this Court to exercise its jurisdiction under Article III, Section 2, Clause 2 of the Constitution of the United States, and Title 28, Section 1251(a) of the United States Code to resolve claims that Texas asserts "arise from an interstate water compact." Motion at 2. To resolve disputes between and among sovereigns concerning compacts, this Court's original jurisdiction "extends to a suit by one State to enforce its compact with another State or to declare rights under a compact." *Texas v. New Mexico*, 462 U.S. 554, 567 (1983) (citing *Virginia v. West Virginia*, 206 U.S. 290, 317-19 (1907)). In such cases, this Court's "first and last order of business is interpreting the compact." *Id.* at 567-68. *See also Oklahoma v. New Mexico*, 501 U.S. 221 (1991) (interpreting specific provisions of the Canadian River Compact). Accordingly, this Court looks to the terms of the compact to resolve the plaintiff state's claims. *See Kansas v. Colorado*, 514 U.S. 673, 682-83 (1995) (noting that whether Colorado had violated a specific provision of the Arkansas River Compact was the proper inquiry for the Court and not whether Colorado had violated the Bureau of Reclamation's operating principles for a reservoir in Colorado).

In the present action, Texas contends that a failure to comply with one or more of the obligations under the Río Grande Compact gives rise to its claims. Complaint at 14-15; Brief at 1, 3-4. However, neither the Complaint nor the Brief link specific compact provisions to actions that demonstrate violation of the Río Grande Compact.

In support of its allegations, Texas' Complaint and Brief describe various provisions of the Río Grande Compact and characterize the signatory states' obligations under those provisions. *See* Complaint at 2, 6-7; Brief at 2, 11, 12, 14 (describing the water delivery requirements under the Río Grande Compact); Brief at 12 (outlining the manner in which the Río Grande Compact addresses under- and over-deliveries); and Complaint at 7; Brief at 12, 13 (describing how the Río Grande Compact defines "usable water" stored in Río Grande Project reservoirs). Texas then sets forth, through its Complaint and Brief, allegations concerning the nature of water allocations through the Río Grande Project consistent with the Río Grande Project Act of February 25, 1905, ch. 789, 33 Stat. 814, the benefiting entities of the Río Grande Project, and New Mexico's interference with the operations of the Project to the detriment of those benefiting entities. Complaint at 2, 4; Brief at 2, 8, 16 (describing water ownership and allocation); Complaint at 4 (identifying beneficiaries); Complaint at 9, 10, 11, 12 (alleging actions by New Mexico impacting beneficiaries to Río Grande Project).

In setting forth this framework, Texas describes specific provisions in the Río Grande Compact used in determining the obligations of the signatory states with respect to waters upstream of and in Elephant Butte Reservoir, but fails to explain how such provisions apply to waters in the Río Grande Project Area *below* Elephant Butte Dam, which appear to be the waters affected by New Mexico's alleged actions. In fact, Texas acknowledges that such compact provisions do not address obligations with respect to waters in the Río Grande Project Area below Elephant Butte Reservoir. *See* Complaint at 5 (acknowledging that "[t]he Río Grande Compact did not specifically identify quantitative allocations of water below Elephant Butte Dam as between southern New Mexico and Texas; nor did it articulate a specific state-line delivery allocation. Instead, it relied upon the Río Grande Project and its allocation and delivery of water in relation to the proportion of Río Grande Project irrigable lands in southern New Mexico and in Texas, to provide the basis of the allocation of Río Grande waters between Río Grande Project beneficiaries in southern New Mexico and the State of Texas."). As a result, Colorado cannot discern from Texas' Complaint or Brief the specific interstate compact controversy that warrants this Court's attention and justifies this Court exercising its original jurisdiction.

CONCLUSION

For the reasons set forth above, Colorado takes no position regarding any of Texas' specific allegations against New Mexico. However, the generalities set forth in the Complaint and Brief make it impossible for Colorado to determine whether a compact controversy truly exists. Accordingly, unless and until the compact matters at issue can be clarified to demonstrate the justiciable issue worthy of this Court's attention, Colorado does not support Texas' Motion.

Respectfully submitted,

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